

C O P Y

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opinion*

July 9, 1957

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CONCORD, N.H.

Honorable Fred Kelley
Representative from Littleton
House of Representatives
Concord, New Hampshire

Dear Mr. Kelley:

This will confirm our recent discussions concerning the operation of the Federal Social Security Act as it affects public employees of political subdivisions of this State who are occupying positions covered by the Policemen's Retirement System.

The matter was brought to your attention, as I understand it, because of the situation in which certain policemen in Littleton find themselves. I further understand, however, that the same situation exists in other municipalities in New Hampshire.

Through the provisions of Title 42 U.S.C.A. s. 418 the federal government has made the benefits of Old Age and Survivors Insurance available to certain classes of employees of a state or of a political subdivision of a state. This is effected by a voluntary agreement between the state and the federal government.

It was the basic position of the federal government that such agreement might not be made applicable "to any service performed by employees as members of any coverage group in positions covered by a retirement system . . . on the date such agreement is made applicable to such coverage group." s. 218(d)(1)(A) of the Social Security Act.

However, s. 218(d)(3) provides that, notwithstanding the restrictions in s. 218(d)(1), the agreement may be made applicable to services performed by employees in positions covered by a retirement system, if certain referendum procedures are carried out. However, ss. 218(d)(3) and 218(d)(5)(A) make it clear that the referendum procedures do not apply to service in any policeman's or fireman's position.

Honorable Fred Kelley

C O P Y
- 2 -

July 9, 1957

We understand that the federal government has ruled that an individual is covered by a retirement system even if, through personal disqualification, he is ineligible to be a member. Thus, it has been the law in New Hampshire that in order to join the Policemen's Retirement System one must be thirty-five years of age or less at the time of becoming a police officer. As a result of this provision, many policemen in New Hampshire are ineligible to be members of the Policemen's Retirement System.

Yet, in view of the position of the federal government above referred to, they are deemed to be covered by a retirement system - so they are ineligible for Social Security through inclusion in the federal-state agreement.

As indicated in our discussions I know of no state legislation which could resolve the matter as to make these people eligible for Old Age and Survivors Insurance. Legislative action to effect the appropriate change would have to be on the federal level.

Very truly yours,

X.

Warren E. Waters
Deputy Attorney General

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